IN THE HIGH COURT OF DELHI AT NEW DELHI

Bail Application No.1134/2007

Madan Lal & Anr. .....Petitioners
! through: Mr.K.K.Sud, Sr.Advocate with Mr.A.A.Aren and Mr.Anish Shreshtha, Adv,

VERSUS

$ State .....Respondents
^ through: Mr.R.N.Mittal, Sr. Advocate with Mr.Pawan Kumar Mittal, Ms.Akanksha Verma Chandok for complainant
Mr.Anil Soni for the State

% **D**ATE OF DECISION: 13-08-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

FIR No. 477/2006
Dated : 15/9/2006
U/S 498A/304/B/34 IPC
P.S. Mandawali

1. Petitioners who are father-in-law and mother-in-law of the unfortunate girl Renu @ Ritu pray that they may be

admitted to bail.

2. Petitioners are in judicial custody since 14.9.2006. First petitioner is now aged 61 years. Second petitioner is now aged 59 years.

3. Renu was married to the son of the petitioners on 18.4.2006 according to Hindu rites and ceremonies. She committed suicide on 14.9.2006.

4. On the basis of statement made by her father to the SDM instant FIR was registered. In a nutshell, father of the deceased stated that the in-laws of her daughter were not satisfied with the dowry which he had given at the time of marriage of his daughter. He stated that besides clothes, utensils, gold and silver jewellery and cash in sum of Rs.2 lacs, he had gifted a Santro car to his son-in-law. He stated that immediately after the marriage, the father-in-law, mother-in-law, husband and brother-in-law of his daughter constantly pestered her for more dowry and even used to beat her for not bringing the same. He even implicated the sisters-in-law Renu and Laxmi. He stated that his daughter's brother-in-law named, Harish, used to beat her. He stated that on 14.9.2006 at around 1.00 PM his daughter informed him over the telephone that she was being harassed very badly. He

counseled her to remain calm informing her that he would visit her matrimonial house in the evening. That in the evening he received an information that his daughter had died.

5. Factum of death of Renu and that it was an unnatural death is an admitted fact.

6. Question which arise for consideration is, whether there exists any material where from case is made out to admit the petitioners to bail.

7. With the dawn of independence at the stroke of mid night of 15th August,1947 free India hoped that it would shape its destiny so as to secure justice, equality, liberty and fraternity to all its citizens.

8. Years of social deprivation suffered by female gender were expected to be an event of the past.

9. Unfortunately, the patriarchal social system followed by the majority in India continues to suppress the female gender. Laws after laws were enacted by the Parliament, but unfortunately the social evil of subjecting the female child to all forms of discrimination far from being diluted continue to persist with greater and greater intensity .

10. Section 304B of the Indian Penal Code was inserted in the statute book with the hope that it would be a sufficient

deterrent to dowry seekers.

11. Unfortunately, the statistical data is to the contrary.

12. Being a social menace, apart from an offence against a female, offences attracting Section 304B IPC are viewed as serious offences calling for no latitude in favour of the accused persons.

13. But at the same time, a balance has to be struck between the conflicting social interest and personal liberty of the accused.

14. A Judge has a burdensome responsibility to discharge as he has the power to control the lives and livelihood of the litigants who enter his court.

15. Judges of today face turbulation and trials not contemplated by their predecessors.

16. Organ after organ of the State machinery is found wanting in the discharge of its respective public duty.

17. As I am dealing with an application seeking bail by two persons who have been accused of an offence attracting Section 498A and Section 304B IPC, I have dealt with caution fully aware that I am not to venture to discus the merits or demerits of the evidence collected against the accused persons. Further, I am conscious of the gravity of the offence

of which the petitioners are charged with. Thus, I would be referring to the material on record to briefly note the evidence and what is indicated prima facie from the material on record. I do so for the reason, cogent and overwhelming circumstances need to be brought on record justifying grant of bail to the petitioners. Do any exist?

18. Petitioners have placed on record medical record pertaining to their son, Manish, which prima facie evidences that Manish was suffering from functional impotency and that he was suffering from performance anxiety. Petitioners state that their son Manish was having a skin problem on his penis and had undergone circumcision. According to petitioners, they were not aware of the said physical condition of their son. According to the petitioners, their son was not in a position to enjoy the marital bliss and that due to erectile dis-functional organ he was unable to have coitus. As their daughter-in-law was complaining of abdominal pain and as petitioners state that none informed that she was pregnant, deceased took medicine for abdominal pain. But since pain persisted she was advised to have a diagnostic i.e. ultrasound test conducted on her abdomen. That on 13.9.2006, she underwent an ultrasound at Tarawati Ram Gopal Mehra Foundation

Charitable Medical Centre which revealed a pregnancy of 21 weeks plus or minus 10 days. According to petitioners, since their son was unable to have coitus with their daughter-in-law, it was but evident that she was carrying the baby of some other person and due to shame committed suicide the very next day.

19. Learned counsel for the petitioners drew my attention to the statement made by the mother of the deceased before the learned SDM on 15.9.2006 wherein the mother of the deceased, inter alia, made the following grievance against the son of the petitioners :-

> "Husband of my daughter had never taken her for outings. Till date, he never took her out and never had food outside. .....Her husband Manish had no time for her. He always used to remain at shop. Used to go at 7.00 in the morning and would return home at 11.00 in the night."

20. It was urged that the statement made by the mother of the deceased to the learned SDM on 15.9.2006 clearly brings out that the husband of the deceased was shunning her company. Counsel urged that the conduct of a newly married husband to remain away from his wife from 7 AM to 11 PM in the night was suggestive of the fact that he could not enjoy the consortium. That the very thought of have

sex with his wife was traumatic for him.

21. Learned counsel urged that the mother of the deceased, in her statement to the learned SDM on 15.9.2006, stated that a day before the incident i.e. 13.9.2006 her daughter was assaulted by her son-in-law and due to a fist blow on her face, a tooth had got loosen.

22. Counsel urged that postmortem report does not show any assault. There is no abrasion on the face or cheeks nor any tooth being dislocated.

23. To put it pithly, Mr.K.K.Sud, learned senior counsel for the petitioners urged that the material on record brings out that the husband of the deceased was suffering from dis-functional erectile and was shunning the physical company of his wife. The wife had got pregnant. She was aware that the pregnancy was through some other male. She could not suffer the shame and thus committed suicide.

24. Learned counsel for the State and learned senior counsel Shri R.N.Mittal appearing for the complainant urged that the petitioners were trying to create a smoke screen. That the postmortem report recorded that the foetus was 16 weeks. That the statements of the parents and the maternal uncle of the deceased clearly brought out that the deceased

was being harassed for dowry. Learned senior counsel urged that as admittedly the deceased had died within 5 months of her marriage and there being a demand for dowry, a statutory presumption arises that the accused have deemed to have caused her death.

25. Having given a thoughtful consideration to the material on record and rival submissions, to my mind, a third possibility happening and same probably influencing the mind of the deceased cannot be ruled out.

26. In view of the medical evidence which prima facie suggests that the husband of the deceased was suffering from functional impotency and also from performance anxiety, yet possibility of the wife being pregnant by the husband cannot be ruled out.

27. After all the couple were in the prime of their life. The anxiety to explore the body of each other would be expected to be there in the young couple.

28. The possibility of the two, while in foreplay, rubbing their sexual organs is a possibility which cannot be brushed aside. It is a possibility that fecundation may have taken place ab extra by semen encountering the vagina of the deceased and causing a possible pregnancy without penetration or

normal intercourse. Such an event was recognized in the decision reported as 1934 PD 186 *Snowman Vs. Snowman* followed with approval by the House of Lords in the decision reported as (1924) AC 687 *Russel Vs. Russel*. It was observed as under :

> "Fecundation ab extra is admittedly, by the medical testimony, as vouched by the learned Judge in his summing-up a rare but not impossible occurrence; but its accomplishment will depend not only or exclusively on the proximity of the organs but on certain other potential qualities of the particular man."

29. As her husband visiting a sexologist was probably known to the family, possibility of the deceased being traumatised by the thought that how would she explain her pregnancy to her conservative parents-in-laws is not ruled out.

30. The young bride who was unable to enjoy the sexual bliss with her husband being traumatised with the thought of shame could be a possible factor which influenced her unfortunate decision.

31. No doubt, the parents of the deceased would feel furious if their young daughter is labeled as a woman of easy virtue or a girl having extra marital affairs, but unfortunately, lack of sexual awareness in this country as to what possibly could have happened may have resulted in the young girl

becoming a victim of circumstances.

32. There is no evidence of any physical assault on 13.9.2006. Except for the statements made by the parents and maternal uncle of the deceased after she died, there is no contemporaneous evidence of any dowry demand.

33. Considering the afore-noted peculiar features, I lean in favour of upholding the personal liberties of the petitioners.

34. The petition stands disposed of directing the learned Trial Judge to admit the petitioners to bail on petitioners furnishing personal bond in sum of Rs.25,000/- each with two sureties each in the like amount to the satisfaction of the learned Trial Judge.

35. Needless to state, on being released on bail, petitioners would not contact the family members of their deceased daughter-in-law and would not intimidate with any witness.

36. Copy of the order be supplied dasti to learned counsel for the parties.

August 13, 2007 PRADEEP NANDRAJOG, J.
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